



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on April 27, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST 98-3675

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of **CONTINENTAL AIRLINES, INC., CONTINENTAL EXPRESS, INC. AND VIACAO AEREA SAO PAULO, S.A. (VASP)**, filed **3/27/98** for:

XX Exemption for Continental for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of person, property, and mail (a) between Newark, NJ, on the one hand, and Belo Horizonte, Brasilia, Campo Grande, Curitiba, Florianopolis, Goiania, Iguassu Falls and Porto Alegre, Brazil, on the other, via Sao Paulo; (b) between Newark, N.J., on the one hand, and Belo Horizonte, Brasilia, Campinas, Curitiba, Recife, Salvador and Vitoria, Brazil, on the other, via Rio de Janeiro; (c) between Miami, FL, on the one hand, and Fortaleza, Recife, Salvador and Sao Paulo, Brazil, on the other; and (d) between Los Angeles and Sao Paulo, under a code-share arrangement with VASP on flights operated by VASP.

XX Exemption for VASP for two years under 49 U.S.C. 41301 to provide the following service:

Scheduled foreign air transportation of person, property, and mail (a) between Brazil and Baltimore, Boston, Chicago, Cincinnati, Cleveland, Columbus (OH), Denver, Detroit, Indianapolis, Los Angeles, Philadelphia, Pittsburgh, Portland (OR), Seattle, and Washington (DCA) via Newark; (b) between Brazil and Cleveland, Houston, and Newark via Miami; and (c) between Brazil and Honolulu and San Francisco via Los Angeles, under a code share arrangement with Continental on flights operated by Continental.

XX Statement of Authorization for Continental and Continental Express under Part 207 of the Department's regulations to:

Permit Continental and Continental Express to display the VASP "VP*" designator code on Continental flights between Newark, on the one hand, and Sao Paulo and Rio de Janeiro, on the other; and on Continental and Continental Express flights: (a) between Newark, on the one hand, and Baltimore, Boston, Chicago, Cincinnati, Cleveland, Columbus (OH), Denver, Detroit, Indianapolis, Los Angeles, Philadelphia, Pittsburgh, Portland (OR), Seattle, Washington (DCA), and Toronto, Canada, on the other; (b) between Miami, on the one hand, and Cleveland, Houston and Newark, on the other; and (c) between Los Angeles, on the one hand, and Honolulu and San Francisco, on the other.

XX Statement of Authorization for VASP under Part 212 of the Department's regulations to:

Permit VASP to display the Continental "CO*" designator code on VASP flights: (a) between Sao Paulo, on the one hand, and Belo Horizonte, Brasilia, Campo Grande, Curitiba, Florianopolis, Goiania, Iguassu Falls, Porto Alegre and Rio de Janeiro, on the other; (b) between Rio de Janeiro, on the one hand, and Belo Horizonte, Brasilia, Campinas, Curitiba, Recife, Salvador and Vitoria, on the other; (c) between Miami, on the one hand, and Fortaleza, Recife, Salvador and Sao Paulo, on the other; and (d) between Los Angeles and Sao Paulo.

The Joint Applicants state that they propose to implement their code-share arrangement on June 1, 1998; that the arrangement is in the public interest and will link the extensive Continental and Continental Express U.S. network with VASP's Brazilian network, thereby providing Continental and Continental Express and their passengers and shippers greater access to Brazil and providing VASP's passengers and shippers with greater access to the U.S. They also maintain that grant of the requested authority will enable them to compete more effectively with the three other code-share partnerships between U.S. and Brazilian carriers which have already been approved.

Applicant rep: **R. Bruce Keiner, Jr. (202) 624-2500** DOT Analyst: **Linda Senese/Terri Bingham (202) 366-2390**

(See Reverse Side)

DISPOSITION

XX *Granted, in Part, subject to conditions (See below)*

XX *Balance Dismissed (Indianapolis and Columbus)*

The above action with respect to the requests for exemption authority was effective when taken: April 27, 1998, through April 27, 2000.

The above action with respect to the requests for statements of authorization was effective when taken: April 27, 1998, and will remain in effect indefinitely, subject to the conditions listed below.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX Authority granted is consistent with the aviation agreement between the United States and Brazil, as amended, and the November 18, 1997 Memorandum of Consultations.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificate of public convenience and necessity (Continental), and foreign air carrier permit or exemption (VASP)**

XX **Standard Exemption Conditions (attached)**

Conditions: The statements of authorization granted are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) Continental/Continental Express and VASP continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Continental and/or VASP must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.

(c) The code-share operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out the service in computer reservations systems and elsewhere, and that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

Dismissal: Under the U.S.-Brazil aviation agreement U.S. and Brazilian carriers may operate code-share services at points named in the route schedules to the agreement. In addition, the November 18, 1997 Memorandum of Consultations provides that each country may select up to total of 25 points for services by its carriers operated on a code-share-only basis. Effective October 1, 1998, each country may select an additional five code-share-only points for services by its carriers. To date, the United States Government has selected 14 cities. All of the Brazilian points to be served by Continental are named in the agreement or are included in the code-share-only points already selected by the United States.¹ The Government of Brazil has already selected all 25 of its code-share-only cities. Columbus OH and Indianapolis are not included in the points selected. Therefore, we have dismissed the application to the extent it seeks authority to code-share in these markets. The carriers are free to reapply for this authority when additional code-share-only points become available.

Remarks: To the extent not specifically requested here, the Joint Applicants already hold the necessary underlying authority to operate the requested code-share services. See Notice of Action Taken, dated February 21, 1997, for VASP, and Order 97-4-13 for Continental.

¹ In this regard, we noted that Continental had requested that the United States select Campinas as one of the cities for U.S.-carrier code-share-only services. That airport is considered by the United States Government as served through Sao Paulo, a point named in the U.S.-Brazil aviation agreement and, therefore, no additional selection is necessary.

We found that the carriers were qualified to provide the authorized code-share services.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authorities was consistent with the public interest; and (3) grant of the authorities would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*

Appendix A

U.S. Carrier Standard Exemption Conditions

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

Foreign Air Carrier
CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).